

**Testimony of
Commissioner Linda Breathitt
Federal Energy Regulatory Commission
before the
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives**

October 5, 1999

Summary

Federal electricity legislation is needed to address the uncertainty that seems to exist in today's electric industry. Much of the uncertainty surrounds issues such as statutory authority, jurisdiction, and the need for and affect of wholesale and retail restructuring. I believe the proposed Electricity Competition and Reliability Act of 1999, H.R. 2944, effectively addresses many of these areas of uncertainty. I believe further that H.R. 2944, with certain modifications, will advance the development of competitive wholesale and retail electricity markets in this country.

My testimony addresses five specific aspects of the proposed bill: (1) open transmission access; (2) regional transmission organizations (RTOs); (3) expansion of interstate transmission facilities; (4) electric reliability; and (5) merger authority. Only in the areas of RTOs and the expansion of the transmission grid do I recommend that the Subcommittee consider alternative approaches.

Congress has a considerable opportunity in this session to pass meaningful legislation that will expand competition in the electric industry. I urge Congress to avail itself of this opportunity.

**Testimony of
Commissioner Linda Breathitt
Federal Energy Regulatory Commission
before the
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives**

October 5, 1999

Chairman Barton and Members of the Subcommittee:

Good morning. My name is Linda Breathitt and I am a Commissioner of the Federal Energy Regulatory Commission. Thank you for inviting me and my colleagues to appear before you today to discuss the need for Federal electricity legislation and the provisions of H.R. 2944, the Electricity Competition and Reliability Act of 1999.

Let me begin by commending you, Mr. Chairman, and other Members of the Subcommittee for crafting what I consider to be a comprehensive and important piece of legislation that will certainly advance the development of competitive wholesale and retail electricity markets in this country.

I believe that Federal electricity legislation, such as H.R. 2944, is needed to address the uncertainty that seems to exist in the industry. Much of the uncertainty surrounds issues such as statutory authority, jurisdiction, and the need for and affect of wholesale and retail restructuring. I believe H.R. 2944 will, in large part, allay the uncertainty. Furthermore, the guidance and clarification offered by the legislation will enable the Commission to further its goals of achieving a fair, open, and competitive bulk power market.

I am unable today to address each provision of H.R. 2944. Therefore, I would like to comment briefly on five specific aspects of the proposed bill: (1) open transmission access; (2) regional transmission organizations; (3) expansion of interstate transmission facilities; (4) electric reliability; and (5) merger authority.

Open Transmission Access

The cornerstone of the Commission's efforts to create an open, non-discriminatory electric transmission system is the requirement that all public utilities that own, operate, or control interstate transmission facilities provide transmission service over their facilities to all wholesale buyers and sellers on a non-preferential basis. Such non-discriminatory open access to transmission services is essential to the development of competitive wholesale bulk power markets. Despite the Commission's efforts, however, certain impediments to full open access remain. One such impediment is that a significant portion of the Nation's transmission grid is owned and operated by utilities not subject to Commission open access requirements. Section 102(b) of H.R. 2944 amends the definition of "public utility" in section 201(e) of the Federal Power Act (FPA) to include transmitting utilities, other than Federal power marketing administrations and the Tennessee Valley Authority, for purposes of regulating transmission rates, terms, and conditions. I believe this provision would result in a more cohesive transmission grid and will greatly facilitate open transmission access.

Regional Transmission Organizations

On May 13, 1999, in a unanimous decision, the Commission issued its Notice of Proposed Rulemaking (NOPR) on Regional Transmission Organizations (RTOs). In the NOPR, the Commission found that appropriate regional transmission institutions can address many of the operational and reliability issues now confronting the electric industry. Specifically, we found that such institutions could: (1) improve efficiencies in transmission grid management; (2) improve grid reliability; (3) remove the remaining opportunities for discriminatory transmission practices; (4) improve market performance; and (5) facilitate lighter handed regulation.

The Commission proposed, among other things, to establish fundamental characteristics and functions that RTOs must satisfy. Furthermore, we proposed that all public utilities that own, operate, or control interstate transmission facilities make certain filings pertaining to participation in an RTO. Specifically, utilities not already participating in an approved Independent System Operator (ISO) would make one of two alternative filings with the Commission by October 15, 2000. First, a utility may propose to participate in an RTO that satisfies the minimum characteristics and functions and that will be operational no later than December 15, 2001. Alternatively, a utility may make a filing that describes its efforts to participate in an RTO, any existing obstacles to RTO participation, and any plans and timetables for future efforts to participate in an RTO. A public utility that is already a member of an existing ISO would make a filing no later

than January 15, 2001 that explains, among other things, the extent to which the ISO in which it participates meets the minimum characteristics and functions for an RTO.

In the NOPR, the Commission sought to accomplish its objective of forming RTOs by encouraging voluntary participation by public utilities. In this light, as indicated above, the Commission proposed, as part of its filing requirements, a process for a utility to describe in an alternative filing any efforts to participate in an RTO, reasons it has not participated in an RTO, any obstacles to RTO participation, and any plans the public utility has for further work toward participation in an RTO.

The voluntary approach for RTO formation outlined in the NOPR is, in my opinion, a fundamental and crucial aspect of our proposal. I believe that a certain amount of flexibility is necessary on the part of the Commission as utilities move toward forming RTOs. Therefore, it is important to me that public utilities have an opportunity to identify and explain any obstacles or restrictions they face in joining an RTO.

Section 103 of H.R. 2944 would require all transmitting utilities to establish or join an RTO by January 1, 2003. I believe that Congress should not impose, at this time, a mandate for utilities to join an RTO, but rather should encourage voluntary participation. There is considerable support among stakeholders for a voluntary approach.

Section 103 of H.R. 2944 also proposes certain standards that RTOs must meet. In his testimony to the Subcommittee today, Commission Chairman James J. Hoecker recommends that Congress take a somewhat different approach. Given that the

Commission has yet to evaluate all of the comments submitted on its RTO NOPR, Chairman Hoecker suggests that Congress should not lock the details of these standards into statutory text given the possible need to adapt the standards to future changes in the industry before the FPA is again modified. I agree with Chairman Hoecker that Congress should preserve the Commission's discretion to reflect changing circumstances in specific RTO requirements and standards.

Expansion of Interstate Transmission Facilities

One of the most important issues now facing the electric industry is the need to enhance or expand the transmission grid. The success of the Commission's goals of transmission open access and wholesale competition depends on an adequate and reliable supply of transmission capacity. Since the issuance of Order No. 888 in 1996, there has been a tremendous increase in the amount of wholesale electric power being traded. Open access and industry restructuring, both at the wholesale and the retail levels, have caused demand for transmission capacity to soar. As a result, the Nation's transmission grid is struggling to keep pace with the industry's rapid growth. The increased usage is imposing tremendous strain on the system. The Commission must take deliberate action to encourage the industry to address this situation.

Section 105 of H.R. 2944 proposes to address grid expansion by authorizing the Commission to order a transmitting utility to expand its transmission facilities, upon application of an electric utility or transmitting utility. Furthermore, this section would create joint boards consisting of State and Federal agencies to make recommendations to

the Commission pertaining to transmission system expansion. In his testimony, Chairman Hoecker states that he sees no compelling need for the Commission to be given the authority specified in Section 105 of H.R. 2944. I agree with Chairman Hoecker on this point. It is my belief that RTOs will play a significant role in system expansion.

In my opinion, the transmission system is not keeping pace with growing demand in the bulk power market. The reason for this is that the industry is increasingly unwilling to make transmission-related investments given the uncertainties that exist in an industry still in the midst of restructuring and the risk of earning inadequate returns on new transmission investments. I believe the Commission must address this problem in two ways. First, the Commission must ensure that its transmission pricing policies conform to the changing electricity marketplace and that transmission owners or operators are encouraged to file innovative pricing proposals. Second, the Commission must adopt policies that will provide proper incentives to market participants and other investors to expand and enhance transmission facilities. Both of these objectives will be addressed, as they pertain to RTOs, at least, in the new FPA section 202(h)(6) as proposed in section 103 of H.R. 2944. This would be a reasonable starting point for the Commission to consider the effect its current transmission pricing policies have on the evolving electric industry and the need for a more incentive-based approach.

Electric Reliability

Section 201 of H.R. 2944 amends the FPA to provide the Commission with specific authority pertaining to the formation of a self-regulating electric reliability

organization and the development of enforceable reliability standards. Many in the industry, including the North American Electric Reliability Council (NERC), recognize the lack of clear Federal authority for establishing or enforcing reliability standards for the electric industry and the importance that electric reliability be maintained as the industry is restructured. I believe that emerging competition in the electric industry necessitates a change in the manner in which the reliability of the interconnected electric system is overseen and managed. The present model of voluntary compliance by electric utilities of regulatory rules and criteria established by NERC and its member Regional Reliability Councils has worked effectively for over three decades. However, given the profound changes taking place in the industry, I believe this voluntary system should be replaced by a model similar to that proposed in Title II of H.R. 2944. Such a model would retain many of the features of the current system that has been so effective in the past, while adding necessary oversight and enforcement mechanisms. There is a compelling need for such Federal authority and I support the provisions of this section.

Merger Authority

Section 401 of H.R. 2944 amends the FPA to authorize the Commission to review proposed mergers and disposition of facilities of all electric utilities and transmitting utilities, including State and municipal utilities, most rural electric cooperatives, and Federal electric utilities. This section extends the Commission's merger authority to include generation companies and clarifies the Commission's merger authority over

holding companies. Furthermore, the section establishes time limits for the Commission to review merger applications.

I support the provisions of this section. The Commission is charged under Section 203 of the FPA to evaluate public utility mergers and dispositions to determine whether such actions are consistent with the public interest. I believe the Commission is uniquely situated and eminently qualified to perform this important task. The Commission and its Staff possess extensive knowledge of and expertise in the electric industry. Given the changing nature of the electric industry, I believe it is essential that the Commission continues to evaluate public utility mergers and that the scope of our merger authority be extended as proposed in this section.

As for the time line proposed in section 401(a)(4) of H.R. 2944, I believe the Commission has shown repeatedly that it processes merger applications within the prescribed 150-day period. However, I agree with Chairman Hoecker that occasionally a proposed merger raises issues of material fact that must be resolved in a public hearing context. In these instances, I believe the Commission would need additional time in which to process the application.

Conclusion

In conclusion, I believe that Federal legislation is needed to address uncertainty that exists in the industry. For the most part, I believe that H.R. 2944 accomplishes this objective. However, there are certain provisions of the proposed legislation that should be revised. I have identified a few such instances.

Congress has a considerable opportunity in this session to pass meaningful legislation that will expand competition in the wholesale and retail electric markets. I urge Congress to avail itself of this opportunity. I look forward to continuing the dialogue with the Subcommittee on this important legislation.